APPEAL NO. 031727
FILED AUGUST 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 2, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (self-insured) appealed, asserting that the hearing officer erred in determining that the documentation submitted by the claimant constituted narrative reports that specifically explained how the injury causes a total inability to work and that Dr. N's medical report was not credible to show that the claimant had an ability to work. The claimant responded, urging affirmance.

DECISION

Affirmed.

We note that the claimant attached to her response some documentation that was admitted at the CCH and other documentation that was not admitted at the CCH as evidence. Documents submitted for the first time on appeal are generally not considered, unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence must have come to the party's knowledge since the hearing; it must not have been due to a lack of diligence that it came to the party's knowledge no sooner; it must not be cumulative; and it must be so material that it would probably produce a different result upon a new hearing. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). After reviewing the documentation attached that was not in evidence, we cannot agree that it meets the requirements for newly discovered evidence and, as such, it will not be considered.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the eligibility requirements for SIBs. The parties stipulated that on _____, the claimant sustained a compensable neck, both knees, right shoulder, left leg/foot and low back injury while in the course and scope of her employment; that she received a 23% impairment rating; that she did not commute any portion of her impairment income benefits; and that the qualifying period for the first quarter was from November 13, 2002, through February 11, 2003. At issue is whether the claimant met the good faith effort to obtain employment as required by Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contends that she has a total inability to work in any capacity. Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The self-insured contends that the medical reports submitted by the claimant fail to meet the requirements of Rule 130.102(d)(4). The hearing officer determined that during the qualifying period in dispute, the claimant was unable to work in any capacity pursuant to narrative reports provided by Dr. T, Dr. G, and Dr. O, and that these narrative reports specifically explain how the claimant's _____, injury caused her inability to work between November 13, 2002, and February 11, 2003, the qualifying period in dispute. We have held that the reports from different doctors cannot be read together to create a narrative report. The narrative report must come from one doctor. Texas Workers' Compensation Commission Appeal No. 011152, decided July 16, 2001. Consequently we have reviewed the reports of each doctor separately and we note that Dr. O's report dated April 23, 2003, incorporates by reference information from Dr. T's and Dr. G's medical records. In Texas Workers' Compensation Appeal No. 002724, decided January 5, 2001, we stated that in determining whether the requirements of Rule 130.102(d)(4) for a doctor's narrative report are met, the following will be considered: amendments; supplements, including CCH testimony from the doctor; information incorporated in the report by reference; or information from a doctor's medical records in evidence that can be reasonably incorporated in the doctor's narrative report by inference based on some connection between the report and the information in the medical records. In reading the hearing officer's decision, we do not think she improperly combined three reports in deciding whether there was an adequate narrative. We will not assume that the hearing officer erred in this case. The hearing officer could rely on Dr. O's narrative report that incorporated by reference portions of Dr. T's and Dr. G's reports, to determine that there was one report from a doctor that specifically explains how the injury caused a total inability to work during the qualifying period in dispute. We perceive no reversible error.

The self-insured argues that the hearing officer erred in determining that Dr. N's medical report was not credible. The hearing officer determined that no other records credibly show that the claimant could have returned to work between November 13, 2002, and February 11, 2003, given her condition due to the _____, injury and the medications she was taking for her condition. The hearing officer commented in the Statement of Evidence that the claimant's testimony credibly demonstrated that parts of the examination reflected in Dr. N's December 12, 2002, report did not take place at the December 5, 2002, examination, such as "measurements of the girth of Claimant's arms"; thus, the report is not credible. While we agree that the hearing officer is the trier of fact and not only has the authority but the obligation to weigh the evidence presented, in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 002498, decided November 30, 2000. In this case, the hearing officer explained why she found Dr. N's medical report not credible. *See also* Texas Workers' Compensation Commission Appeal No. 002129, decided October 27, 2000 (list of some factors that determine whether other records such as a medical report show that the injured employee is able to return to work). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to

be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

_____
Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge